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purpose of the bankrupt in transferring his property is a question of fact for the jury.

4. Same.—A conveyance to one creditor of what would otherwise under the act go to all binders and delays the other creditors and is in fraud of the act, whether or not the transfer is fraudulent at common law, under the statute of fraudulent conveyances, or otherwise.

FRENCH *v.* LOGAN'S ADM'R et al.

March 1, 1908.

[60 S. E. 622.]

1. Wills—Construction—Vested Estates.—The law favors the vesting of estates, and where a bequest or devise is made, and the property is not to be enjoyed in possession until some future period or event, it will, in the absence of some special intent to the contrary, be construed to be vested in interest immediately on the death of the testator, rather than contingent on the state of things which may exist when the legatees or devisees are entitled to the possession.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 49, Wills, §§ 1461, 1462.]

2. Same.—Testator provided that all property and money given to a beneficiary should vest in a third person in trust for her benefit, free from the debts or control of her husband for her life, and at her death divided among her "issue according to the statute of descents and distribution." In the same clause he directed that the remainder of his estate should be divided into two equal parts, of which one should be divided among "the heirs and distributees" of a deceased brother according to the statute of descents and distributions, and the other half among the heirs and distributees of another deceased brother "according to the same statute." Held, that the remainder on the death of the beneficiary vested at the death of the testator, subject to the life estate of the beneficiary.

SOUTHERN RY. CO. *v.* NEWTON'S ADM'R.

March 12, 1908

[60 S. E. 625.]

1. Master and Servant—Injuries to Servant—Condition of Railroad Tracks.—Where a brakeman was killed while in the performance of his duties in endeavoring to uncouple a car from a freight train, and the accident resulted from his stepping into a trench or excavation which had been dug along the track for the purpose of putting in target signals, the railway company was negligent, although it may

have been dealing with an independent contractor for putting in such signals.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 34, Master and Servant, §§ 218-221.]

2. Same—Care Required.—A railway company owes its servants the duty of ordinary care to protect them against danger from defective tracks.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 34, Master and Servant, §§ 218-221.]

3. Same—Evidence—Contributory Negligence.—In an action for the death of a brakeman while in defendant's employ, held, that the evidence justified the finding that deceased was not guilty of contributory negligence.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 34, Master and Servant, §§ 987-996.]

CROUNSE *v.* CROUNSE.

March 12, 1908.

[60 S. E. 627.]

1. Divorce—Sufficiency of Evidence—Cruelty.—Where the evidence of a husband seeking a divorce on the ground of cruelty shows nothing more than a lamentable state of domestic infelicity, and it is apparent that much of which he complains has been the result of his own fault, and would have been different had he shown his wife some kindness and consideration, he cannot succeed.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 17, Divorce, § 62.]

2. Same—Desertion.—A husband broke off all marital relations with his wife in 1902, and had since been absent from his home, with the exception of two or three visits of a few hours' duration, though the wife had desired his return and attempted to effect it. A decree of the court, rendered previous to the decree of divorce in 1906, gave him a certain time within which to resume his marital relations; but he declined the opportunity. Held, that he had no intention of resuming the marriage tie, and the wife was entitled to a divorce for desertion.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 17, Divorce, §§ 120-125.]

3. Same—Causes—“Desertion.”—Desertion is a breach of matrimonial duty, and consists of the actual breaking off of the matrimonial cohabitation, coupled with an intent to desert in the mind of the offender.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 17, Divorce, §§ 107-115.]

For other definitions, see Words and Phrases, vol. 3, pp. 2020-2024; vol. 8, p. 7635.]